XIV-88/(Jail)
C. J. P. R.-2000 6-88

CrA 1035/92

(2)

APPEAL OF PRISONER

Division Bench (Criminal)

No. 5204 Name गणेश

Father's name हरीराम साहू, निवासी- सिरसिदा, थाना- कुरूद,

Residence जिला- रायपुर (म०प्र०) Age 26 वर्ष,

Sentenced आजीवन कारावास on 16.7.1992

Under section 302 भा०दण्ड वि० by न्यायालय- अतिरिक्त सत्र न्यायाधीश धमतरी, जिला- रायपुर (म०प्र०) सत्र प्रकरण क्र०- 30/92

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 16.7.1992

2 Date of which copy received 5.8.1992

3 Date on which Appeal sent 5-8-1992

4 whether the prisoner wishes to be represented or not – Yes / ~~No~~.

No. 5204 Name गणेशराम पि० हरिराम साहू

Confined in CENTRAL Jail RAIPUR

No. 4074/Cstg Dated 92 Dt 5-8-92

Forward to the ~~CHIEF JUDICIAL MAGISTRATE~~ अतिरिक्त पंजीयक महोदय, माननीय उच्च न्यायालय म०प्र० जबलपुर

to gather which a copy of order passed in the case for favour of transmission to the proper Appellate Court.

अधीक्षक
केन्द्रीय जेल, रायपुर (म. प्र.)

Superintendent

Date of receipt in C. J. M's office

Date of receipt record to accompany

Memo of Appeal of the Appeliate court

CRIMINAL APPEAL NO.1035 OF 1992

Ganesh Ram

Vs.

The State of M.P. (Chhattisgarh).

Judgment for consideration

Sd/-
R.S. Garg
Judge
24/04/2001.

Sd/-
Chief Justice

Hon'ble The Chief Justice:

Post it for: 27/04/2001.

Sd/-

Seen
27/4/2001

Seen
Gupta Bhadwi
27/4/2001 GA

(29)

HIGH COURT OF CHHATTISGARH : AT BILASPUR.

Criminal Appeal No.1035 of 1992.

Ganesh Ram, S/o Hariram ... Appellant.

Vs.

The State of Madhya Pradesh ... Respondent.
(Chhattisgarh)

* * * * * * * *

Judgment

By. Hon.Shri R.S. Garg,J :

The appellant named above, being aggrieved by the judgment dated 16.7.92, passed by the learned Additional Sessions Judge, Dhamtari, in Sessions trial No.302/91, convicting the appellant under Section 302 I.P.C. and sentencing him to undergo R.I. for life, has filed this appeal against the findings,conviction and sentence.

2). The present appellant, his brother Ram-Shankar, uncle Dhukal, cousin Benuram, Sister Latabai, mother Janakibai, brother's wife Dineshwari-bai, and Sister's husband Jairam, in all eight persons were prosecuted by the prosecution,inter-alia alleging that these persons committed murder of the deceased and caused dis-appearance of the material evidence relating to the alleged crime. It is note-worthy that the other seven persons,on the same set of facts and evidence,

have been acquitted and against the said acquittal, the State has not filed any appeal.

3). The prosecution case in brief is that Dayabai- wife of the present appellant Ganeshram was issue-less, therefore, the appellant Ganeshram and his relations did not like the said Dayabai. They were treating her with cruelty and were fighting with her just for nothing. On 9-6-91, at about 7.00-8.00 a.m., all the accused quarrelled with the deceased, abetted/instigated the present appellant to beat and murder the deceased. The appellant caused certain injuries to the deceased by means of wooden log, throttled her and accordingly murdered her. Immediately, after committing the murder of Dayabai, the present appellant came out of his house, boarded on a cycle and ran away from the spot. The accused persons informed the villagers that the deceased died because of epilepsy; but before they could cremate the dead-body, the police reached on the spot and seized the body. The body was,thereafter sent for its post mortem. The doctor informed the police authorities that the deceased died as a result of throttling and she had certain marks of injuries on her person. After recording the statements of the witnesses and preparation of the panchanamas, armed with sufficient material, the police filed the challan against these eight persons.

4). After recording the evidence and hearing

the parties, the learned trial Court convicted the present appellant Ganeshram, but acquitted the all others. Being aggrieved by ~~the~~ said conviction and award of sentence, the appellant has filed this appeal.

5). Shri Vishnu Koshta, learned counsel for the appellant submits that from the oral evidence adduced and the documentary evidence produced by the prosecution, it does not appear that the accused committed murder of his wife. According to him, if on the same set of evidence, seven persons have already been acquitted, then the present appellant alone could not be convicted. It is also submitted by him that the learned Court below has presumed ~~that~~ the accused to be the murderer simply because some witnesses said that the accused was absconding for some time. He submits that the absconsion at the best may be a circumstance against the present appellant, but that would not take the place of positive proof. It is also submitted that in absence of positive statements that the appellant committed murder of his wife, the findings are bad and the appellant deserves to be acquitted.

6). On the other hand, ~~Shri~~ Gautam Bhaduri, learned counsel for the State submits that from the statements of the witnesses, it would clearly appear that the deceased died ~~of~~ a homicidal death. The appellant was treating the deceased with cruelty and as immediately after the alleged

incident, the accused ran away from the spot, the Court below was absolutely justified in recording the findings against the present appellant. He also submits that in a given set of circumstances, absconsion may provide the missing link to connect the accused with the crime. He has prayed for dismissal of the appeal.

7). We have heard the parties at length and have gone through the complete records.

8). P.W.1 Ramkishun is not an eye-witness. He has stated before the Court that the deceased died on 9-6-91. According to him, he was invited by the mother of the present appellant to see the condition of Dayabai. According to him, Dayabai was suffering with cramps, some froth was coming out from her mouth. He has also stated that he stayed there for about 10 minutes and thereafter, Dayabai's body became action-less. He stated that the doctor came to the spot and declared that she was already dead. Thereafter, he sent the information to the police station; police came to the spot and recorded his statements. In the cross-examination, nothing substantial was asked to him. From the statements of this witness, it would clearly appear that when he was invited by the mother of the present appellant, Dayabai was alive.

9). P.W. 2 Ghanshyam had stated that on the fateful day when he was sitting at his house with some of his relations, he heard the shouts from

the house of the accused. The accused was abusing his wife and the deceased was weeping. After some time, the accused came out of the house, boarded on a cycle and ran away. According to him, thereafter, sister of the accused required the mother of the accused to give a massage to the doctor and also asked the other persons to call other villagers. He also stated that on the call of relations of the accused, Sadaram, Kaleshwar Rao Tokene and Ramkishun Kotawar came to the house of the accused. When Kaleshwar Rao Tokene asked Janakibai (mother of the accused) that since when the deceased was doing like that, the mother of the accused informed him that the deceased was suffering with attacks of epilepsy. The doctor, after his arrival declared that Dayabai was dead. In paragraph 7 of his statement, he clearly admitted that he was not a witness to the incident of marpeet. According to him, from the different types of voices, he thought that the accused Ganeshram was beating his wife. In paragraph 8, he admitted that on the fateful day, the accused persons were making earthen tiles. He also admitted that from his house, the place where the accused persons were making earthen tiles was not visible. In paragraph 10, on being confronted with the case diary statement-Ex.D/1, he admitted the material fact that immediately after the incident, the accused Ganeshram ran away from the spot, was not available in Ex.-D/1. From his

statements, three material facts were emerged, that the accused was beating his wife, the accused left his house on a cycle and on arrival of certain persons, mother of the accused informed them that the deceased was suffering with attacks of epilepsy. It also appears from his statements that he did not see the said marpeet and the material fact that the accused ran away from the spot on a cycle was not stated by him before the police.

10). P.W. 3 Paradesiram informed the parents of the deceased that she was unwell. P.W. 4 Ghanshyam is the brother of the deceased. According to him, the deceased was treated with cruelty because she was issue-less. He requested the family members of the accused not to treat Dayabai with cruelty. According to him, after receiving the information that Dayabai was unwell, he reached the house of the accused where he was informed that she had already died. He was informed by Shankar that the accused was not available in the house. The material allegations that the accused persons were not permitting the deceased to play with the children and he advised the family members of the accused to treat the deceased properly were missing in his case diary statements. Neither he is an eye-witness nor he was informed by any-body that the accused committed murder of his sister. The material allegations that the deceased was treated with cruelty and he had advised the accused and his family members to treat the

deceased properly are missing in his case diary statements.

11). P.W. 5 Dasru is a village doctor. According to him, when he had examined Dayabai, she was already dead.

12). P.W.6 Sadaram stated before the Court that the deceased Dayabai once came to his house and informed him that the accused and his family members were treating her with cruelty. She also informed him that her husband was also extending cruel treatment. In paragraph 4 of his statement, he stated that he gave some advice to accused Ganeshram. Neither he is a witness to the incident, nor to any other circumstances, except for the alleged fact that he was informed by the deceased that the accused persons were treating her with cruelty.

13). P.W.7 Shyamlal is neither an eye-witness nor knew about the relation of the deceased with her husband. He was,however, declared hostile, but he did not support the prosecution .

14). P.W.8 Kruparam stated before the Court that a day before the death of Dayabai, he heard about some fight between the deceased and her mother-in-law.

15). P.W.9 Deluram is brother of the deceased. In paragraph 3 of his statement, he stated that Dileshwari and Janakibai were quarrelling with the deceased and Dileshwari, Shankar and the present appellant were taking their side. According

to him, one Paradesi came to his house and informed them that Dayabai was unwell, thereafter, he was informed by his brother that Dayabai was had expired. According to him, finding the death to be suspicious, he lodged the report with the police. In paragraph 8 of his cross-examination it was suggested to him that even at the time of marriage Dayabai suffered an attack of epilepsy. This witness is not a witness to the incident, but simply suggested that the family members of the accused were quarrelling with the deceased.

16). P.W.10 Kaleshwar Rao was informed by Janakibai about the ill-health of Dayabai. According to him, when he reached to the house of the accused, he found that Dayabai was making gaggling sounds and was unconscious. He also stated that though he was informed by the family members that Dayabai suffered an attack of epilepsy, but he himself being suspicious about the incident, required the others to call the doctor. The village doctor came to the spot and declared that Dayabai was dead. From his statements, it does not appear that he is a witness to the incident. He has made a positive statement in favour of the accused that when he reached the house of the accused, Dayabai was alive. did not die. According to him, the wooden log was discovered on the information of the accused. On the very next day of the incident, Ganeshram was available in the village and at his instance, the said wooden log was recovered.

17). P.W.11 Shrikant Shukla performed autopsy on the body of the deceased. He clearly stated that the deceased died as a result of throttling. He also stated that there were marks on the neck of the deceased and there were two contusion marks on the body of the deceased. In the cross-examination it was suggested to him that the death was not result of throttling, but he denied the suggestion.

18). P.W.12 Ferharam is the father of the deceased. In paragraph 3 of his statement, he stated that the accused and his family members were treating the deceased with cruelty. He is neither a witness to the incident nor he knew that how the deceased died.

19). P.W.13 Diwakar Singh Bhagel had recorded the statements of Paradesiram, Shyamlal,Ramkishun, Janakibai, and Jeerabai. He also sent the wooden log for the opinion of the doctor.

20). P.W.14 Harishchandra Sahoo was the Patwari,who prepared the spot map. P.W.15 Ramswaroop had taken the body of the deceased for post mortem and the wooden log for the opinion of the doctor, to the hospital.

21). P.W.16 Shivjati Giri was the Investigating Officer. After receiving the information on 10.6.91, he reached the spot, prepared panchanama of the body, sent the body for post mortem and after receiving the post mortem report, registered Dehati Nalish at Ex.-P/9. He had also seized

wooden log at the instance of the accused. He also prepared the spot map Ex.-P/10 and recorded the statements of number of the witnesses. On the basis of Dehati Nalish Ex.-P/9, he registered the F.I.R. at Ex.-P/11.

22). The above is sum total of the evidence produced by the prosecution. Basically, the Court below has relied upon the statements of brothers and father of the deceased to hold that the deceased was treated with cruelty and to record the finding against the appellant, the Court below has relied upon the statement of P.W.2 Ghanshyam. The above narration of the evidence would show that barring the statement of P.W.2 Ghanshyam, the prosecution has not brought anything on the record to show that on the fateful day the accused committed murder of his wife. The Court below has also drawn inferences against the accused because immediately after the alleged marpeet, the accused ran away from the spot.

23). Shri Vishnu Koshta, learned counsel for the appellant submits that if the possibility that because the other accused persons were beating the deceased and he feeling helpless left the house cannot be ruled out and, the accused could not be convicted. According to him, even from the statements of P.W.2 Ghanshyam it would not appear that the accused was the author of the crime.

24). Shri Gautam Bhaduri, learned counsel for the State submits that immediately after the

marpeet, the accused ran away from the house and as the body of the deceased was found in bad shape, it would lead to only irresistible conclusion that the accused after causing injuries to his wife, ran away.

25). P.W.2 Ghanshyam though stated in para 2 of his statement that the accused was beating his wife, but he no-where says that he had seen the accused beating his wife. According to him, he heard certain shouts and cries from the house of the accused. The reliability of this witness in relation to this statement would stand seriously hampered, in view of his statement as contained in para 8. In para 8, he clearly stated that on the date of incident, all the accused persons were preparing earthen tiles and the place where they were making tiles was not visible from his house. From the statements of number of witnesses, it would appear that when they had gone to see the deceased, she was not dead, but was making strange sounds. The doctor in the present case did not say that even after throttling the deceased could survive for some time. The ordinary experience in the life is that a person dies immediately after throttling. The doctor (P.W.11) Shrikant Shukla in para 22 of his statement had clearly stated that there was no fracture in trachia. The doctor clearly stated that the deceased died as a result of throttling, but he did not say that within how-much time the deceased must have died.

26). Be that as it may, the fact remains that the accused, according to P.W.2 came out of his house, boarded on a cycle and left his house, thereafter certain persons came to the house of the accused and found the deceased in bad shape.

27). On the strength of this evidence, it cannot be held that the accused committed murder of his wife. The prosecution came out with the case that the co-accused(since acquitted) instigated/abetted the accused to commit the crime, their acquittal would lead to the conclusion that they did not abet the commission of crime. It is not in dispute before us that no-body has seen the accused committing murder of his wife. The prosecution is relying upon two circumstances; firstly, that P.W.2 Ghanshyam heard voices from the house of the accused, secondly, that the accused ran away from the spot. The third circumstance that a wooden log was recovered at the instance of the accused and the doctor opined that the contusion found on the body of the deceased would be caused by the said wooden log, would not be material because the deceased did not die as a result of those contusions injuries.

28). The evidence simply shows that the accused ran away from the spot. Whether absconsion a presumption is the proof of the guilt or not has been considered by the Supreme Court in the matter of Rahman Vs. The State of U.P., reported in AIR 1972 Supreme Court-110 , the Supreme Court has

observed that absconding may be one of the circumstance, but that would not lead to the guilt of the accused. In the matter of Sat Kumar Vs. State of Haryana, reported in AIR - 1974 Supreme Court- 294, the Supreme Court has held that if the evidence is common and for convicting some accused it cannot be accepted, then, acquittal of some of the accused must provide a foundation for acquittal of all.

29). In our opinion, in a case of circumstantia evidence, the prosecution is obliged to bring some prima facie evidence on record to connect the accused with the alleged crime. If the evidence falls short in connecting the accused with the alleged crime, then the benefit would go to the accused and not to the prosecution. In case of circumstantial evidence, the burden is still higher on the prosecution. In a case depending upon circumstantial evidence , the prosecution must bring on record such facts which complete the chain, at one end of which the crime stands while on the other hand the accused stands. If there are missing links, then again the benefit would go to the accused and not to the prosecution. A person cannot be convicted simply because he happens to be husband of the deceased. The prosecution in every case is obliged to prove its case to a reasonable certainity and if the prosecution fails in bringing the evidence on the record or the evidence brought on record fails to connect the accused with the crime, then,

conviction cannot be recorded. In our opinion, in the present case, it would be most unsafe to rely upon the statement of P.W.2 Ghanshyam to connect the accused with the alleged crime.

30). After giving our anxious consideration to the facts of the case, we are of the opinion that the prosecution could not prove its case beyond doubt. The findings recorded by the Court below are not in accordance with law and records, therefore, the same cannot be approved. The findings are based on conjectures and surmises. We are unable to approve the said findings. The said findings are hereby set aside.

31). The appeal is allowed. The accused is acquitted of the charges. The accused appears to be in jail, he be immediately released, if not required in connection with any other offence.

Sd/-
Chief Justice

Sd/-
R.S. Garg
Judge

/Subbu/.